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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *EC* DEPUTY

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7

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 IMAGENETIX, INC., a Nevada corporation

Case No. *08 CV 1369 LAB WMC*

12 Plaintiff,

13 v.

14 CETYLMAX, LLC, a Utah Limited Liability  
15 Company; FLEXADREN, LLC, a Utah  
16 Limited Liability Company

17 Defendants.

COMPLAINT FOR DAMAGES,  
PERMANENT INJUNCTIVE RELIEF,  
AND RESTITUTION UNDER 15 U.S.C.  
§1121; 28 U.S.C. §1338; BUS. & PROF.  
CODE §17200 AND §17500

18 Plaintiff, IMAGENETIX, INC., alleges in this Complaint for Damages and Injunctive Relief as  
19 follows:

20 I.

21 JURISDICTION AND INTRODUCTORY STATEMENT

22 1. Jurisdiction is conferred on this court by § 39 of the Lanham Act, 15 U.S.C.A. §  
23 1121, and by 28 U.S.C.A. § 1338.

24 2. This complaint seeks damages and a permanent injunction against the defendants  
25 to prevent unfair competition and ongoing deceptive advertising practices in the false  
26 representations of FLEXADREN, LLC, ("FLEXADREN") and CETYLMAX, LLC,  
27 ("CETYLMAX") published in various documents and media, including through postings on  
28

1 Web sites and through radio commercials (“infomercials”) that are widely disseminated to the  
2 public.

3       3. Plaintiff is in the business of promoting, licensing, and selling various nutritional  
4       supplements and other products, including Celadrin®, a proprietary product available in oral  
5       capsule and topical cream form which has been the subject of several scientific studies  
6       (hereinafter the “Celadrin® Studies”), the results of which have been published in several peer-  
7       reviewed science journals, including the prestigious *Journal of Rheumatology*.

8       4. The Celadrin® Studies have concluded, *inter alia*, that Celadrin® has been  
9 proven to be effective in reducing pain and improving functional performance in certain classes  
10 of persons suffering from osteoarthritis. Defendants are in the business of promoting and selling  
11 products with a different proprietary formulation that claim to be effective for those who suffer  
12 from osteoarthritis. Defendants have cited the Celadrin® Studies as support for claims about  
13 their own products, even though their own products are of a different formulation than  
14 Celadrin®, and Defendants' products have not been the subject of any published studies  
15 whatsoever.

II

## PARTIES

18       5. Plaintiff, IMAGENETIX, INC., a Nevada corporation (hereinafter "Imagenetix")  
19 or ("Plaintiff") is, and at all times herein mentioned was, a corporation organized and existing  
20 under the laws of the State of Nevada and duly registered and qualified to do business in the  
21 State of California, with its principal place of business at 16935 W. Bernardo Drive, Suite 101,  
22 San Diego, California, 92127 until January of 2006, and thereafter until the present at 10845  
23 Rancho Bernardo Road, Suite 105, San Diego, California 92127.

24       6. Plaintiff IMAGENETIX is and, at all times herein mentioned, was the owner of  
25 United States Federal Trademark Registration No. 2,599,153 pertaining to the mark, Celadrin®,  
26 and in the business of producing for sale to its retail or wholesale customers a proprietary  
27 formulated product known as Celadrin® .

1       7. Defendant CETYLMAX, LLC, is, and at all times herein mentioned was, upon  
2 information and belief, a corporation organized and existing under the laws of the State of Utah  
3 with its principal place of business at 891 West Robertson Drive, Building 1, North Salt Lake,  
4 Utah 84054, and at all times herein doing business in San Diego, California by way of marketing,  
5 advertising, offering for sale and selling its various products, including the product, CetylMax™.

6       8.      Defendant FLEXADREN, LLC, is, and at all times herein mentioned was, upon  
7 information and belief, a corporation organized and existing under the laws of the State of Utah  
8 with its principal place of business at 891 West Robertson Drive, Building 1, North Salt Lake,  
9 Utah 84054, and at all times herein doing business in San Diego, California by way of marketing,  
10 advertising, offering for sale and selling its various products, including the product Flexadren™.

III

## **FIRST CAUSE OF ACTION**

(Against Defendant CETYLMAX, LLC, for Violations of

§ 43(a) of the Lanham Act, 15 U.S.C.A. § 1125)

15        9. Plaintiff incorporates by reference paragraphs 1-8 above as though set forth in full  
16 at this point.

17 10. This action is brought under § 43(a) of the Lanham Act, 15 U.S.C.A. § 1125.

18        11.      Jurisdiction is conferred on this court by § 39 of the Lanham Act, 15 U.S.C.A. §  
19      1121, and by 28 U.S.C.A. § 1338.

20       12. Commencing on or about June 1, 2005, and continuing to the present, Defendant  
21 **CETYLMAX**, the company, with respect to its product CetylMax™, has promoted said product  
22 and placed commercial advertising concerning said product in various media publications,  
23 including but not limited to product package inserts, "infomercials" and on their own website.  
24 Defendant **CETYLMAX** has thereby and otherwise made statements likely to mislead  
25 consumers into believing that Defendant's product, CetylMax™, was "a proprietary matrix of  
26 fatty acid carbons" that had been the subject of several studies reported in peer-reviewed journal  
27 articles, and the results of those studies had "medically and clinically proven" CetylMax™ to

1 have had numerous beneficial effects on the patients studied.

2       13. The **CETYLMAX** website indicates a copyright date of 2008 by "CetylMax,  
3 LLC", and can be accessed by typing in either "Cetylmax" or "Flexadren" in an internet search  
4 engine, or by entering the internet address of <http://cetylmax.com/home.php> or  
5 <http://cetylmax.com/faq/php>. To those who access the website, the following false statements  
6 and misrepresentations appear, which continue to be made as of the date of this Complaint:

7       a.      "CetylMax™ is the hottest joint supplement available. With no reported  
8 side-effects and so many great benefits, why not try it today?"

9       This statement is false in that it conveys the false impression, through implication,  
10 innuendo or ambiguity, that the product CetylMax™ has been the subject of scientific  
11 studies where benefits were found and no side-effects were reported. The truth is  
12 CetylMax™ has not been the subject of any such studies.

13       b.      "CetylMax's primary nutrient driver is made up of Cetylated Fatty Acids (**CFA**)  
14 which are bound in a proprietary matrix of fatty acid carbons which have been  
15 scientifically arranged to achieve maximum strength and mobility." (Original Emphasis).

16       This statement is false in that it conveys the false impression, through implication,  
17 innuendo or ambiguity, that the product CetylMax™ is essentially a proprietary and  
18 distinct blend of fatty acid carbons which can be called in shorthand **CFA**, and that the  
19 product CetylMax™ and the boldfaced initials **CFA** may be used interchangeably when  
20 referring to scientific studies. The truth is, in the scientific community, where **other**  
21 proprietary and distinct blends of fatty acids have been studied, with published results, the  
22 initials **CFA** have never been associated with the product CetylMax™ and that  
23 CetylMax™ itself has not been the subject of any published scientific studies.

24       c.      "**CFA** has been studied for its anti-inflammatory properties. These anti-  
25 inflammatory properties have been proven to improve the quality of life for the almost  
26 everyone who has used the supplement."

27       This statement is false in that it conveys the false impression, through implication,  
28

1 innuendo or ambiguity, that the product CetylMax™ is "the supplement" which has been  
2 studied for its anti-inflammatory properties, and that CetylMax™ has been found to  
3 improve the quality of life for those who have used that product. The truth is that  
4 CetylMax™ has not been the subject of any such studies but, to the contrary, published  
5 studies have found that a competing product, with a different and distinct proprietary  
6 blend, namely Celadrin®, has improved the quality of life in patients who have been  
7 administered that competing product.

8 d. "CFA, in its topical analgesic cream form contains all-natural ingredients which  
9 have been medically and clinically proven to reduce inflammation and pain with no side  
10 effects."

11 This statement is false in that it conveys the false impression, through implication,  
12 innuendo or ambiguity, that the product CetylMax™, in its topical analgesic cream form,  
13 is the specific product which has been medically and clinically proven, in scientific  
14 studies, to reduce inflammation and pain with no side effects. The truth is, CetylMax™  
15 has not been subject to any such studies but, to the contrary, published studies have found  
16 that a competing product, with a different and distinct proprietary blend, namely  
17 Celadrin®, has improved the quality of life in patients who have been administered that  
18 competing product.

19 e. "CetylMax™ is currently offered as an oral dietary supplement and as a topical  
20 analgesic cream; its benefits have been proven to perform best when paired with  
21 Glucosamine, and has outperformed Chondroitin, MSM, SAMe and many other arthritic  
22 medications. (Paragraph) In studies conducted at The University of Connecticut, 100% of  
23 osteoarthritic subjects showed significant improvement in just 30 minutes ...."

24 This statement is false in that it conveys the false impression, through implication,  
25 innuendo or ambiguity, that the product CetylMax™ has itself been the subject of  
26 scientific studies which have shown CetylMax™ to have out performed rival arthritic  
27 medications, and that, in particular, the University of Connecticut study has shown

1 CetylMax™ to have caused significant improvement in osteoarthritic subjects within 30  
2 minutes of treatment. The truth is that there are no such studies in support of  
3 CetylMax™, but to the contrary, the Connecticut study which is cited did not use  
4 CetylMax™ on any of its subjects, but instead used a rival and distinctly different  
5 product, Celadrin®, and it was the product Celadrin® that was found to have shown a  
6 significant effect on osteoarthritic subjects.

7 f. "How long should I take CetylMax™? Like any joint supplement, one should  
8 continue to take it for lasting mobility. In studies, patients saw the most change after  
9 45-60 days of continued use."

10 This statement is false in that it conveys the false impression, through implication,  
11 innuendo or ambiguity, that the product CetylMax™ has itself been the subject of  
12 scientific studies which have shown CetylMax™ to be effective for joint mobility, and to  
13 be effective in particular for lasting joint mobility after 45-60 days of continued use. The  
14 truth is that CetylMax™ has not been shown to have any effect on joint mobility in any  
15 studies, but that, to the contrary, the use of a rival product, Celadrin®, has been shown to  
16 be effective in several studies on joint mobility.

17 g. "Care to read more about CetylMax™ CFA? See our CFA Clinical Studies link  
18 to the left. CFA has been carefully studied, and that clinical research has been published  
19 publicly in such places as The Journal of Rheumatology ( August 2003) and the Journal  
20 of Strength and Conditioning Research (2005)."

21 This statement is false in that it conveys the false impression, through implication,  
22 innuendo or ambiguity, that the product CetylMax™ has itself been the subject of clinical  
23 studies, and specifically, studies published in The Journal of Rheumatology in August  
24 2003 and the Journal of Strength and Conditioning Research in 2005. The truth is that  
25 there are no published studies whatsoever on CetylMax™ , and that, to the contrary, the  
26 use of a rival product, Celadrin®, has been the subject of studies published in The Journal  
27 of Rheumatology in 2002 and 2004, and the Journal of Strength and Conditioning  
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1 Research in 2005.

2 14. Instances of false and misleading statements made on radio infomercials, and on  
3 the **CETYLMAX** website at <http://cetylmax.com/home.php> and on the **CETYLMAX** FAQ  
4 website at <http://cetylmax.com/faq/php> include the following statements made by **CETYLMAX**  
5 spokespersons:

6 a. Radio Infomercial Voice Number One, after previously talking about published  
7 studies in the *Journal of Rheumatology*:

8 "Now, the ingredients in CetylMax™ cream have been shown to reduce pain and improve  
9 mobility in people suffering from a variety of joint, muscle, and tendon-related ailments.  
10 It's also been shown to reduce pain and swelling and increase range of motion."

11 This statement is false in that it conveys the false impression, through implication,  
12 innuendo or ambiguity, that the product CetylMax™ itself "has been shown to reduce  
13 pain and improve mobility" in clinical studies. In truth, CetylMax™ has not been tested  
14 in any published studies, and the study referred to in the *Journal of Rheumatology* was  
15 done with subjects being given a rival product, Celadrin®, to reduce pain and improve  
16 joint mobility.

17 b. Radio Infomercial Voice Number Two, identified as "Doctor Charles Cochran,  
18 DC, specializing in physical therapy and mobility" makes the following statement in  
19 response to the posed question, "Doctor, who would benefit most from using  
20 **CETYLMAX** tablets and cream?":

21 "Of course, anyone with any type of 'itis' type conditions....The human body is very  
22 complex and it's really capable of its own healing....When the pharmaceutical companies  
23 create, synthetically, what the body needs organically, a higher potential of problems  
24 exist. Of course, this is what we are finding....So, when taking any kind of natural  
25 substance, I would always make sure that the studies have been done, and in this case, the  
26 studies have been done and they've been published in some very, very reputable medical  
27 journals. The *Journal of Rheumatology*, for instance, is not a nutritional periodical. It's a  
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1 very prestigious medical journal and the studies are there.... So, the studies are done.  
2 CetylMax™ is not only a symptom reliever, it really is a joint building nutrient.  
3 Medicine has nothing like this."  
4 This statement is false in that it conveys the false impression, through implication, innuendo or  
5 ambiguity, that the product CetylMax™ has itself been the subject of clinical studies in reputable  
6 medical (not nutritional) journals. Specifically, this statement by "Doctor Cochran" implies that  
7 studies have shown that pharmaceutical companies have had higher problems with their arthritic  
8 products than CetylMax™, and further that CetylMax™ was the subject of a major study  
9 published in *The Journal of Rheumatology* showing that CetylMax™ itself was not only an  
10 arthritis symptom reliever, but in fact a joint building nutrient. The truth is, no such studies have  
11 been done on CetylMax™ and that, to the contrary, the study referred to in the prestigious  
12 medical journal, *The Journal of Rheumatology*, was done on a rival product, Celadrin®.

13 15. Defendant's statements described in paragraphs 13 and 14 were also false because  
14 in fact the studies (hereinafter the "Celadrin Studies") referred to above in the **CETYLMAX**  
15 advertisements all involved plaintiff's proprietary product Celadrin®, not Flexadren™, and not  
16 CetylMax™.

17 16. Neither Celadrin®, nor Flexadren™, nor CetylMax™ are generic products: each  
18 is a proprietary blend of fatty acids with different formulations and different manufacturing  
19 processes, such that claims made for one proprietary product are unsupported and misleading if  
20 based on research conducted on a different proprietary product.

21 17. The President of **CETYLMAX**, Roger LeFevre, who is also President of  
22 **FLEXADREN**, has admitted that Celadrin® and CetylMax™ are not generic products, but that  
23 each is a distinct proprietary blend of fatty acids with different formulations.

24 18. The false statements and misrepresentation in commercial advertising or  
25 promotion, as referred to with specificity above, were disseminated by **CETYLMAX** to viewers  
26 of its website and listeners of its radio infomercials, which viewers and listeners were actually  
27 deceived or tended to be deceived by it.

1        19. The false statements and misrepresentation in commercial advertising or  
2 promotion, as referred to with specificity above, were disseminated by Defendant **CETYLMAX**,  
3 to viewers of its website and listeners of its radio infomercial in a manner which is and was likely  
4 to influence the purchasing decisions of the persons to whom it was disseminated.

5       20. The false statements and misrepresentations referred to above injured Plaintiff by  
6 causing Plaintiff to lose customers and sales, resulting in business losses in an amount no less  
7 than \$1,000,000.

8           21. The false statements and misrepresentations referred to above were made in  
9 commerce.

10        22. The false statements and misrepresentations referred to above were and are likely  
11 to cause Plaintiff irreparable harm by sowing confusion in the mind of the public as to the  
12 ingredients in CetylMax™; as to the testing which has been performed on CetylMax™; as to  
13 which product or products were actually the subject of the Celadrin® studies; and as to the  
14 efficacy of Celadrin®. Such confusion will irreparably damage Plaintiff's reputation and the  
15 reputation of Celadrin®, the true subject of the Celadrin® Studies.

IV

## **SECOND CAUSE OF ACTION**

(Against Defendant FLEXADREN, LLC, and CETYLMAX, LLC for Violations of  
§ 43(a) of the Lanham Act, 15 U.S.C.A. § 1125)

20       23. Plaintiff incorporates by reference paragraphs 1-22 above as though set forth in  
21 full at this point.

22 24. This action is brought under § 43(a) of the Lanham Act, 15 U.S.C.A. § 1125.

23        25.      Jurisdiction is conferred on this court by § 39 of the Lanham Act, 15 U.S.C.A. §  
24      1121, and by 28 U.S.C.A. § 1338.

25        26.     Commencing on or about June 1, 2005, and continuing to the present, Defendants  
26     **FLEXADREN** and **CETYLMAX** have placed commercial advertising concerning the two  
27 products, Flexadren™ and CetylMax™, in various publications, including but not necessarily

1 limited to the websites for both Flexadren™ and CetylMax™. Said Defendants have thereby and  
 2 otherwise made and continue to make statements likely to mislead consumers into believing that  
 3 the Celadrin®-containing product Flexadren™, is the same as, and "is now CetylMax™."

4       27. Prior to on or about June 1, 2005, for several years, the product Flexadren™ was  
 5 widely marketed and sold to the general public with the statement that Flexadren™ contained  
 6 Celadrin's® proprietary blend of cetylated fatty acids as part of Flexadren's™ own formulation.  
 7 This marketing has led to the perception by the general public, and specifically to customers of  
 8 **FLEXADREN** and **CETYLMAX**, which perception continues to be held to this day, that  
 9 purchasers of Flexadren™ or a successor product would be purchasing a product containing  
 10 Celadrin®.

11       28. **CETYLMAX** President, Roger LeFevre, who is also President of  
 12 **FLEXADREN**, has claimed that, prior to June, 2005, Flexadren™ contained Celadrin®; and  
 13 that the product CetylMax™ has never contained Celadrin®.

14       29. An instance of the Defendants' misleading and false advertising and promotion,  
 15 which continues to be made as of the date of this Complaint, is the information that is provided  
 16 to those who go on line to visit either the **FLEXADREN** website or the **CETYLMAX** website,  
 17 where the initial view presented on both sites is an advertisement which proclaims, "Flexadren™  
 18 is now CetylMax™"; after a few moments, the screen dissolves and the viewer is shown the  
 19 initial page of claims and promotional material for the product CetylMax™ with all its false  
 20 statements and misrepresentations, as set forth in detail herein. The truth is, "Flexadren™ is not  
 21 CetylMax™ and never was; CetylMax™ is not "Flexadren™ and never was. Moreover, and  
 22 critically important, the truth is that CetylMax™, unlike Flexadren™, does not now and never  
 23 has contained the product which has been tested in the many studies referred to herein: namely,  
 24 Celadrin®.

25       30. The false statements and misrepresentation in commercial advertising or  
 26 promotion, as referred to with specificity above, were disseminated by Defendants **CETYLMAX**  
 27 and **FLEXADREN** to their respective customers and to viewers of both the Flexadren™ website  
 28

1 and the CetylMax™ website, which customers and viewers were actually deceived or tended to  
2 be deceived by it.

3       31. The false statements and misrepresentation in commercial advertising or  
4 promotion, as referred to with specificity above, were disseminated by Defendants **CETYLMAX**  
5 and **FLEXADREN** to their respective customers and to viewers of both the Flexadren™ website  
6 and the CetylMax™ website in a manner which was likely to influence the purchasing decisions  
7 of the persons to whom it was disseminated.

8       32.     The false statements and misrepresentations referred to above injured Plaintiff by  
9 causing Plaintiff to lose customers and sales, resulting in business losses in an amount no less  
10 than \$1,000,000.

11           33. The false statements and misrepresentations referred to above were made in  
12 commerce.

13       34. The false statements and misrepresentations referred to above were and are likely  
14      to cause Plaintiff irreparable harm by sowing confusion in the mind of the public as to the  
15      ingredients in CetylMax™; as to the testing which has been performed on CetylMax™; as to  
16      which product or products were actually the subject of the Celadrin® studies; and as to the  
17      efficacy of Celadrin®. Such confusion will irreparably damage Plaintiff's reputation and the  
18      reputation of Celadrin®, the true subject of the Celadrin® studies.

IV

## **THIRD CAUSE OF ACTION**

(Against All Defendants For Violations of  
Business and Professions Code Section 17200)

23       35. Plaintiff incorporates by reference paragraphs 1-34 above as though set forth in  
24 full at this point.

25       36. Plaintiff IMAGENETIX is suing in both its personal capacity and on behalf of the  
26 general public.

37. Beginning at an exact date unknown to plaintiff but at least since June 1, 2005,

1 and continuing to the present, including the date of this Complaint, **CETYLMAX** and  
2 **FLEXADREN** (collectively, "Defendant Companies") have committed acts of unfair  
3 competition, as defined by Business and Professions Code section 17200, by engaging in the  
4 following practices: in various publications, as set forth above, Defendant Companies have made  
5 statements likely to mislead consumers into believing that the product Flexadren<sup>TM</sup>, containing  
6 Celadrin<sup>®</sup>, is the same as the product CetylMax<sup>TM</sup>, and that CetylMax<sup>TM</sup> itself has been the  
7 subject of product studies reported in peer-reviewed journal articles, when in truth the studies  
8 referred to were performed using one product and one product only: Plaintiff's proprietary  
9 product Celadrin<sup>®</sup>, and not CetylMax<sup>TM</sup>.

10       38.      The acts and practices, as described in paragraph 37 above, violate Business &  
11 Professions Code section 17200 in the following respects:

12       a.      Defendant Companies' policy/practice of claiming that "Flexadren<sup>TM</sup> is now  
13 CetylMax<sup>TM</sup>" and the policy/practice of referring to the Celadrin<sup>®</sup> Studies as if those  
14 studies involved CetylMax<sup>TM</sup> are likely to mislead the general public and, consequently,  
15 constitutes fraudulent business acts or practices within the meaning of Business and  
16 Professions Code section 17200; and

17       b.      Defendant Companies' acts of untrue and misleading advertising, as more fully  
18 set forth in paragraphs 13, 14 and 29 above, are incorporated herein by this reference and  
19 are, by definition, violations of Business and Professions Code section 17200.

20       39.      The unlawful, unfair and fraudulent business practices and false and misleading  
21 advertising of the defendants and each of them, as described above, present a continuing threat to  
22 members of the public in that Defendants continue to unlawfully disseminate false and  
23 misleading information regarding the identity of the product that was the subject of the  
24 Celadrin<sup>®</sup> Studies, with the result that members of the public, particularly those who suffer from  
25 osteoarthritis, are likely to purchase and use the product CetylMax<sup>TM</sup> under the false impression  
26 that said product has been proven both safe and efficacious in medical studies, and also has been  
27 proven to have beneficial effects in relieving pain and improving the quality of life. The truth is  
28

that no such studies have been performed on CetylMax™ and no such ‘proofs’ exist.

2        40. As a direct and proximate result of the aforementioned acts, Defendant  
3 Companies have wrongfully and unlawfully caused damages to Imagenetix Inc., in an amount no  
4 less than \$5 million in lost sales, and in an amount no less than an additional \$5 million in injury  
5 to reputation and goodwill associated with the Celadrin® product.

V

## **FOURTH CAUSE OF ACTION**

(Against All Defendants for Violations of  
Business and Professions Code Section 17500)

10           41. Plaintiff incorporates by reference paragraphs 1-40 above as thought set forth in  
11 full at this point.

12       42. Beginning at an exact date unknown to plaintiff but at least since June 1, 2005,  
13 and continuing to the present, including the date of the Complaint, Defendant Companies have  
14 committed acts of untrue and misleading advertising, as defined by Business and Professions  
15 Code section 17500, by engaging in the acts and practices set forth above in paragraphs 13, 14,  
16 29 and 39, and elsewhere herein, with intent to induce members of the public to enter into  
17 contracts for the purchase of CetylMax™.

18       43. The acts of untrue and misleading advertising by Defendants described in  
19 paragraphs 13, 14, 29 and 39, and elsewhere herein present a continuing threat to members of the  
20 public in that Defendants continue to unlawfully disseminate false and misleading information  
21 regarding the identity of the product that was the subject of the Celadrin® Studies, with the result  
22 that members of the public, particularly those who suffer from osteoarthritis, are likely to  
23 purchase and use the product CetylMax™ under the false impression that said product has been  
24 proven both safe and efficacious in medical studies, and also has been proven to have beneficial  
25 effects in relieving pain and improving the quality of life. The truth is that no such studies have  
26 been performed on CetylMax™ and no such ‘proofs’ exist. Plaintiff and other members of the  
27 general public have no other adequate remedy of law in that the Defendants, and each of them,

1 unless enjoined by this court, will continue to engage in untrue or misleading advertising, as  
2 alleged above, in violation of California Business & Professions Code Section 17500, et seq.

3

4 WHEREFORE, Plaintiff prays judgment against Defendants and each of them on the  
5 counts set forth above as follows:

6 1. Pursuant to Business and Professions Code section 17203 and 17535, and to  
7 §43(a) of the Lanham Act, 15 U.S.C.A. §1125, and to the equitable powers of this Court,  
8 plaintiff prays that the defendants be preliminarily and permanently enjoined from making,  
9 disseminating, or causing to be made or disseminated before the public in any manner  
10 whatsoever, the unlawful representations detailed herein and in any other manner that such  
11 misrepresentations have been or continue to be published by defendants, including any and all  
12 misleading advertising promoting Defendant Companies' products by studies performed on  
13 Celadrin®.

14 2. Pursuant to Business and Professions Code section 17203 and 17535, and  
15 pursuant to the equitable powers of this Court, plaintiff prays that defendants be ordered to  
16 restore to the general public all funds acquired by means of any act or practice declared by this  
17 Court to be unlawful or fraudulent or to constitute unfair competition under Business and  
18 Professions Code section 17200 et seq., or untrue or misleading advertising under section 17500  
19 et seq.

20 3. Compensation to Plaintiff in the amount of \$1,000,000, representing profits  
21 earned by defendant through its misrepresentation.

22 4. Compensation to Plaintiff in the amount of \$1,000,000 for Plaintiff's lost profits.

23 5. Compensation to Plaintiff in the amount of \$500,000 for expenses incurred by  
24 Plaintiff in counteracting the effects of Defendants' misrepresentation.

25 6. For attorneys' fees pursuant to Code of Civil Procedure §1021.5;

26 7. For costs of suit incurred herein; and

27 8. For such other and further relief, including punitive damages, as the Court may  
28

1 deem just and proper.  
2  
3  
4

5 DATED: July 28, 2008

Submitted by,

6 SHUSTAK FROST & PARTNERS, P.C.  
7  
8

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15  
16 Attorney for Plaintiff Imagenetix, Inc.  
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**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 153476 - TC**

**July 29, 2008  
15:02:20**

**Civ Fil Non-Pris**

USAO #: 08CV1369  
Judge...: LARRY A BURNS  
Amount.: \$350.00 CK  
Check#: BC4385

**Total-> \$350.00**

FROM: IMAGENETIX  
VS  
CETYLMAX

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

## I. (a) PLAINTIFFS

Imagenetix, Inc., a Nevada Corporation

(b) County of Residence of First Listed Plaintiff San Diego, California  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address and Telephone Number)

Erwin J. Shustak (119152) and Thomas C. Frost (185187)  
SHUSTAK FROST & PARTNERS, P.C.  
401 West A. Street Suite 2330, San Diego, CA 92101  
Telephone: (619) 696-9500  
Facsimile: (619) 615-5290

## DEFENDANTS

Cetylmax, LLC, a Utah Limited Liability Company;  
Flexadren, LLC, a Utah Limited Liability CompanyCLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF UTAH  
County of Residence of First Listed Defendant Salt Lake, UtahIN U.S. PLAINTIFF CASES ONLY  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.  
DEPUTY

Attorneys (If Known)

'08 CV 1369 LAB WMc

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Agriculture	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 420 Other Food & Drug	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 863 DIWC/DIWVW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>HABEAS CORPUS:</b>	<input type="checkbox"/> 864 SSID Title XVI!	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			

## V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 (specify)	Transferred from another district	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Lanham Act - 15 U.S.C. 1111 et seq. 15:1125

## VI. CAUSE OF ACTION

Brief description of cause:  
False Advertising

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23DEMAND \$ Greater than  
\$75,000 to be determined at trialCHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  NoVIII. RELATED CASE(S) (See instructions:  
IF ANY)

JUDGE

DOCKET NUMBER

DATE July 29, 2008  
SIGNATURE OF ATTORNEY OF RECORD  
Erwin J. Shustak, Esq.FOR OFFICE USE ONLY  
RECEIPT # 153476 AMOUNT \$350 APPLYING IFFP JUDGE MAG. JUDGE  
American LegalNet, Inc. www.FormsWorkflow.com

TAC 7/29/08

CR